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FEB 26 2004

OFFICE OF PETITIONS

In re Application of  
Douglas Barry et al.  
Application No. 10/627,342  
Filed: July 25, 2003  
Title of Invention: TRANSFER AND  
POSITIONING APPARATUS FOR  
AUTOMATED CONVEYOR SYSTEM

DECISION REFUSING STATUS  
UNDER 37 CFR 1.47(a)

This is in response to the petition filed under 37 CFR 1.47(a) on December 22, 2003.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to respond, correcting the below-noted deficiencies. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a). and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on July 25, 2003 naming Douglas Barry, Thomas L. Bybee, Adrian Chan, John Fuller, Ray Puseman, Greg Rothman, Don R. Simms, Michael Turner, Jay Woods and Inna M. Zevakina as joint inventors, but without a signed declaration.

Accordingly, on September 22, 2003, a "Notice To File Missing Parts of Application" was mailed, requiring *inter alia* a properly executed oath or declaration.

In response, on October 21, 2003, the present petition was filed with a declaration signed only by joint inventors Barry, Chan, Fuller, Puseman, Rothman, Simms, Turner, Woods and Zevakina. Petitioners assert that the Declaration and Assignment were sent to joint inventor Bybee. Evidence submitted with the petition in the form of that a registered mail return receipt signed by Betty Bybee at the last known address for Mr. Bybee, bears proof that the declaration and assignment papers had been delivered to/received by Mr. Bybee. Petitioners seek status under 37 CFR 1.47(a) claiming that thus by his actions, Mr. Bybee refuses to cooperate with the filing of the instant application.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks items (1) set forth above.

In regards to item (1), petitioners have not provided sufficient proof that a copy of the complete application (specification, including claims, drawings, if any, and the declaration) was sent to the non-signing inventor.

The evidence submitted suggests that only the declaration and the assignment were sent to Mr. Bybee for his signature. papers were sent to the non-signing inventor.

The evidence presented does not bear proof that Mr. Bybee has had the opportunity to review the application.

Petitioners may show proof that a copy of the application was sent or given to the non-signing inventor for review by providing a copy of the cover letter transmitting the application papers to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first hand knowledge of the details.

Likewise, before a *bona fide* refusal can be shown, the non-signing inventor must have been given an opportunity to review the application. Therefore, petitioners must show proof that the non-signing inventor refuses to sign the declaration after being sent or given a copy of the application papers. If there is a written refusal, petitioners should submit a copy of that refusal with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

Further correspondence with respect to this matter should be addressed as follows:

By mail:        Mail Stop Petition  
                  Commissioner for Patents  
                  P.O. Box 1450  
                  Alexandria, VA 22313-1450

By FAX:        (703) 872-9306

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703)305-4497.



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